



June 10, 2002

Mr. Harold Willard
Police Legal Advisor
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2002-3102

Dear Mr. Willard:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164081.

The Lubbock Police Department (the "department") received a request for 1) the statement of LaToya Renee White made to Detective Ray Martinez; 2) Detective Martinez's report of the incident; and 3) the videotape of LaToya Renee White's arrest on October 21, 2001. You advise that you are releasing the requested videotape, which has been altered to conceal the identities of those appearing on the tape, to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You contend that the requested information is made confidential under section 143.089(g) of the Local Government Code and therefore must be withheld from the public pursuant to section 552.101 of the Government Code.¹ Section 143.089 provides in pertinent part:

(a) The director [of the fire fighters' and police officers' civil service] or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

....

¹Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

(2) any misconduct by the fire fighter or the police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and

....

(c) A letter, memorandum, or document relating to disciplinary action taken against the fire fighter or police officer or to alleged misconduct by the fire fighter or police officer that is placed in the person's personnel file as provided by Subsection (a)(2) shall be removed from the employee's file if the commission finds that:

(1) the disciplinary action was taken without just cause; or

(2) the charge of misconduct was not supported by sufficient evidence.

....

(f) The director or the director's designee may not release any information contained in a fire fighter's or police officer's personnel file without first obtaining the person's written permission, unless the release of the information is required by law.

(g) A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

In Open Records Decision No. 562 (1990), this office discussed the confidentiality of personnel file information maintained by cities that have adopted the police officers' civil service law in accordance with the provisions of chapter 143 of the Local Government Code. Section 143.089 of the Local Government Code provides for the creation of two personnel files: one that is maintained by the city's civil service director and the other by the city police department.

Section 143.089(a) specifies certain types of information that must be contained in the civil service file; such records are not made confidential under section 143.089 and thus are subject to release unless an exception to required public disclosure applies. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information

maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied).

A police officer's disciplinary records must be contained in the civil service file only if the misconduct results in disciplinary action by the police department "in accordance with this chapter." Local Gov't Code § 143.089(a)(2). Otherwise, those records must be maintained as part of the police department's internal file contemplated under section 143.089(g). *See generally* Attorney General Opinion JC-0257 (2000). In this instance, you inform us that the requested information relates to an internal affairs investigation that resulted in the indefinite suspension of a particular officer, but that the officer is now appealing that disciplinary action. We understand you to contend that because of the pending appeal, these records must be maintained only in the police department's confidential internal personnel file created under section 143.089(g).

While the documents at issue are part of an internal affairs investigation, you advise that the officer has been charged with three counts of official oppression by the Lubbock County Criminal District Attorney's Office. While we generally agree that the department's records of internal affairs investigations that do not result in disciplinary action are confidential under section 143.089(g), the requested information also is contained in the department's criminal case file separate and apart from those of the internal affairs investigation. The department may not engraft section 143.089's confidentiality to other records that exist independently of the internal affairs investigation.

Furthermore, you state that only the notice of suspension was placed in the officer's civil service file pursuant to section 143.089(a). However, the civil service file must contain documents relating to any misconduct in those cases where the department took disciplinary action against the officer. *See* Local Gov't Code § 143.089(a)(2). The requested information relates to the misconduct that resulted in the officer's indefinite suspension. Therefore, this information is also subject to section 143.089(a)(2) and while it may be kept in the police department's personnel file, it also must be forwarded and placed in the officer's civil service file until such time as the civil service commission determines that either 1) the disciplinary action was taken without just cause or 2) the charge of misconduct was not supported by sufficient evidence. *See* Local Gov't Code § 143.089(c). Please note that the department is required to refer the requestor to the civil service director or the director's designee when a request is made to the department for information which is maintained in the police officer's civil service file.

You also claim that the requested information is excepted under section 552.108. Section 552.108, the "law enforcement exception," excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime ... if ... release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that raises section 552.108 must reasonably explain, if the responsive

information does not do so on its face, how and why section 552.108 is applicable. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You advise that the requested information relates to a pending prosecution by the Lubbock County Criminal District Attorney's Office on official oppression charges, and that disclosure of the information would therefore interfere with the prosecution. Based on these representations and our review of the information in question, we find that the release of the requested information would interfere with the investigation or prosecution of crime. *See* Gov't Code § 552.108(a)(1); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). You may therefore withhold most of the information under section 552.108(a)(1).

Section 552.108 does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle*, 531 S.W.2d 177; Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of an offense report. As section 552.108 is dispositive, we do not address your argument under section 552.103.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

² We note that basic information held to be public in *Houston Chronicle* is not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

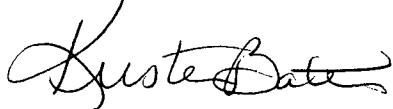
2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 164081

Enc. Submitted documents

c: Mr. Emilio E. Abeyta
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(w/o enclosures)